

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD SIMPSON,

Plaintiff,

v.

AARON PRUNEDA,

Defendant.

CASE NO. C23-5545 BHS

ORDER

THIS MATTER is before the Court on defendant Officer Aaron Pruneda's motion to dismiss for failure to prosecute, Dkt. 24. Pro se plaintiff Richard Simpson sued Pruneda and several others in June 2023, alleging they unlawfully arrested him in November 2022. Simpson alleged that Pruneda assaulted him during that arrest.

Magistrate Judge Grady J. Leupold provided Simpson an opportunity to amend his complaint in support of his application to proceed *in forma pauperis*, and Simpson did so. This Court adopted Judge Leupold's Report and Recommendation (R&R), denied Simpson's application as to his claims against most defendants, and dismissed his case against those defendants without prejudice and without leave to amend, for failure to state a plausible claim. Dkts. 7, 9. The Court granted Simpson's application to proceed *in*

1 *forma pauperis* as to his excessive force claim against Pruneda and granted Simpson's
2 motion for service by the U.S. Marshals Service. Dkts. 9 and 17. The complaint was
3 served on February 29, 2024. The Court issued a scheduling Order on March 4, requiring,
4 among other things, initial disclosures by May 28, and a joint status report by June 3.
5 Pruneda answered on March 8. Dkt. 22.

6 Pruneda now asserts that Simpson has made his initial disclosures and has not
7 responded to counsel's inquiries about the status report. He filed his motion to dismiss for
8 failure to prosecute (and a *Rand* notice) on May 28. Dkts. 24, 25, 26. The motion was
9 noted for June 28, 2024.

10 Simpson has not responded to the motion. Under Local Civil Rule 7(b)(2), a
11 party's failure to respond to a motion to dismiss can be deemed by the Court an
12 admission that the motion has merit:

13 (2) *Obligation of Opponent*. Each party opposing the motion shall, within
14 the time prescribed in LCR 7(d), file with the clerk, and serve on each party
15 that has appeared in the action, a brief in opposition to the motion, together
16 with any supporting material of the type described in subsection (1). Except
for motions for summary judgment, if a party fails to file papers in
opposition to a motion, such failure may be considered by the court as an
admission that the motion has merit.

17 Pruneda's motion *does* have merit, and Simpson's failure to respond is deemed an
18 admission of the same. Simpson has failed to prosecute this action, and failed to respond
19 to a motion pointing out that fact. The motion is **GRANTED** and Simpson's claim
20 against Pruneda is **DISMISSED without prejudice**. Because there are no other pending
21 claims, the clerk shall enter a judgment and close the case.
22

IT IS SO ORDERED.

Dated this 5th day of July, 2024.

Ben A. Ertle

BENJAMIN H. SETTLE
United States District Judge